

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOMINGO PEREZ,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.  
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07 Civ. 8562 (JSR)

ORDER

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>3-10-08</u>
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JED S. RAKOFF, U.S.D.J.

On January 30, 2008 the Honorable Douglas F. Eaton, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned case recommending that Perez's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 be dismissed. Judge Eaton found that the "files and records of the case conclusively show that the prisoner is entitled to no relief." See Report at 11. On February 21, 2008, petitioner sent a letter to this Court requesting that the Court dismiss his § 2255 petition and accept for filing, instead, a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). In the latter motion, Mr. Perez seeks a reduction of his sentence based on the recent amendment to the United States Sentencing Guidelines which lowered the base offense levels applicable to crack cocaine offenses. Because petitioner's underlying criminal case, 02 Crim. 488, is assigned to Judge McMahon, this Court will forward petitioner's § 3582(c)(2) motion to her for review.

As to the § 2255 petition, the Court, having considered the issues set forth, finds itself in total agreement with the reasoning

set forth in Judge Eaton's Report, which the Court hereby adopts by reference. Therefore, the petition pursuant to 28 U.S.C. § 2255 is hereby dismissed with prejudice. Because, moreover, petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, see 28 U.S.C. § 2253, and the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Moreover, as petitioner's claim lacks any arguable basis in law or fact, permission to proceed in forma pauperis is denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005).

Clerk to enter judgment.

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
March 10, 2008